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Prithvi Singh Bansal Vs. Sushila Devi

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Court : Delhi

Decided On : Mar-08-1973

Reported in : 1973RLR344

Judge : P.S. Safeer, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 488

Appeal No. : Criminal Revision Appeal No. 459 of 1972

Appellant : Prithvi Singh Bansal

Respondent : Sushila Devi

Advocate for Pet/Ap. : K.N. Chitkara, Adv

Judgement :

P.S. Safeer, J.

(1) This petition has come up before me along with criminal Revision No. 460 of 1972 in consequence of the order made by Shri S. C. Chaturvedi, Additional Sessions Judge, Delhi on the 30th of November, 1972 in exercise of the jurisdiction provided by section 438 of the criminal Procedure Code, hereafter called 'the Code'. Respondent Sushila Devi Gupta had filed a petition under section 483 of the Code against her husband Prithvi Singh Bansal claiming maintenance on the allegations that she was married with him on the 13th of Nay,

1968 at Delhi, but had b;en deserted and that she was not being looked after by the husband. In paragraph 9 of the petition it was asserted that the parties had last resided in Delhi.

(2) Replying to the petition the husband raised the preliminary objection that he was living and working for gain at Modi Nagar, Uttar Pradesh and had never resided with his wife at Delhi. In paragraph 9 of his reply he stated that the application deserved to be dismissed because of the preliminary objections.

(3) The parties adduced evidence before the trial Magistrate and dealing with the same in paragraphs 5, 6 and 7 of his judgment Shri S. M. Aggarwal, Judicial Magistrate, Delhi found that the parties had last resided in Gandhi Nagar, Delhi and thereforee the Courts in Delhi had the jurisdiction to adjudicate as to what maintenance was to be awarded. He fixed monthly maintenance allowance at Rs. 75 per mensem. Aggrieved by the learned Magistrate's order a petition was preferred by the husband under sections 435/438 of the Code and the learned Additional Sessions Judge after perusing the evidence found that the Court below had ignored Ex.R.I which was a notice which had been issued to the husband at the instance of the wife.

(4) I have gone through Ex. R.1 in paragraph 3 whereof it was stated that the wife had been totally deserted since the 5tb of August, 1970 before which the parties had lived together at different times for a total period,of 7 months 3 days only. I have been taken through the deposition of the wife who appeared as P W. 5 before the trial Magistrate. My attention has been drawn to the following deposition :

'THEdate of 5th August, 1970 mentioned in paragraph of the notice Ex R. 1 is the date when I came away from Modi Nagar to my parents.'

(5) It is urged by the learned counsel appearing in support of the recommendation made by the learned Additional Sessions Judge that reading the afore-quoted deposition along with Ex. R. I the only conclusion possible would be that the parties last resided in Modi Nagar and that for that reason the courts in Delhi had no jurisdiction to proceed with the application preferred under section 488 of the

Code.

(6) The learned counsel appearing for the lady has relied upon section 531 of the Code : The afore-quoted provision significantly prescribes that no finding, sentence or order of any Criminal Court shall be liable to be set aside on the ground that it had resulted from any inquiry, trial or other proceeding held in a wrong sessions division, district, sub-division or local area unless it appears that such error has occasioned the failure of justice. In this case the parties adduced evidence not only in respect 01 the controversy whether the Courts in Delhi had the jurisdiction or not but also in respect of the entire case. Considering evidence and on determining the monthly earnings of the husband, the Magistrate fixed the monthly maintenance for the wife at Rs. 75 per month. No prejudice is shown to have been caused to any party by the adjudication made at Delhi. I have been referred to the observations made in Sardari Lal Amar Nath V. Mt. Kaushalya Devi, ; Abdul Ghaffar V. Bibi Hafiza Khatoon, : AIR1968 Pat307 ; Mohd Maroof V. State through Collector and another and 1 Mangaldas Roghavji Ruprel (In Crl. App. No. 57 of 1963) Daryanomal and other (in Crl. App. No. 113 of 1963), Appellants v. State of Maharashtra and other (in both the appeals) : 1966 CriLJ106 .

(7) The three cases cited before me decided by different High Courts were concerned with the adjudication of applications preferred under section 488 of the Code. The Supreme Court was concerned in : 1966 CriLJ106 with the trial of offences committed under the Prevention of Food Adulteration Act but dealing with the effect of the trial held in a wrong place observed:

'APARTfrom that, the mere fact that proceedings were taken in a wrong place would not vitiate the trial unless it appear that this has occasioned a failure of Justice (See S. 531 Cr. P.C)' I am of the view that no prejudice has been caused to any of the parties and section 531 of the Code furnishes a complete reply to the objections raised on behalf of the husband. The recommendation is declined. Criminal Revision No. 459 of 1972 is dismissed. It is, however, directed that the Learned Additional Sessions Judge will deal afresh with the revision petition preferred by the wife before him praying that the maintenance allowance be

enhanced.

(8) [V.K. Srivastva, Adv.]

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